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# VIRGINIA LAW REGISTER

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All Communications should be addressed to the PUBLISHERS

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A history of the Albemarle Bar would of course be absolutely incomplete without a sketch of Colonel R. T. W. Duke, and whilst the Editor is perfectly aware of the delicacy of his position, he trusts his readers **The Albemarle Bar, XIV.** may understand that this sketch is written impersonally as far as possible.

Col. Richard Thomas Walker Duke was born June 6th, 1822, at Millbrook, the plantation of his father Richard Duke, in Albemarle County, about ten miles from Charlottesville. His father was for some time presiding magistrate of the County Court of Abemarle County and high Sheriff in 1847-48. His mother was Maria Walker, a daughter of Captain Thomas Walker, Jr., an officer in the Revolutionary Army who was a son of Dr. Thomas Walker of Castle Hill. He attended private schools, one of his teachers being his life-long friend William J. Robertson. He entered the Virginia Military Institute in 1842 and graduated second in the class of 1845, having been Cadet Professor of Mathematics in that Institute for the last two years of his attendance. He taught school in Richmond along with Colonel Crozet, who had been an engineer in Napoleon's army and who laid out the line of the present Chesapeake & Ohio Railroad from Charlottesville to Staunton.

He married Miss Elizabeth Scott Eskridge, of Lexington, Virginia, and being appointed principal of the high school at Lewisburg—then Virginia, now West Virginia—he taught there until 1849. While teaching he studied law and was licensed to practice by the Virginia Court of Appeals which then held one of its sessions at Lewisburg.

Upon the death of his father at "Morea", near the University of Virginia, he returned to Charlottesville and, living at "Mo-

rea", studied law, graduating under John B. Minor in 1850. He commenced the practice of law in Charlottesville during that year and for a short while taught school while practicing law. He entered into partnership with William M. Wade, of Scottsville, and the firm soon began to have a very large practice. In 1858 he was elected Attorney for the Commonwealth for Albemarle County, a position he held until removed by the military during reconstruction days.

At the John Brown Raid he organized the Albemarle Rifles, Company B. 19th Virginia Regiment, and was elected Captain. That Company served at Harper's Ferry and at First Manassas, and Colonel Duke was highly complimented in General Beauregard's report of the First Battle of Manassas. At the re-organization in 1862 he was elected Colonel of the 46th Virginia Infantry, but in 1864 he resigned and remained at home thirty days, afterwards being appointed to organize the Reserve Forces—men of sixty and boys of sixteen, and was appointed Lieutenant Colonel of Battalion of Reserves, re-entered the service with them and served until the 6th day of April, 1865, when he was captured at Sailor's Creek.

Colonel Duke was taken to Johnson's Island Prison, spending on his way there one night in Washington in the Old Capitol Prison. This happened to be on the night on which Lincoln was assassinated. He remained a prisoner at Johnson's Island until July, 1865. On his return home to his place just outside of Charlottesville, known as "Sunnyside" as soon as his disabilities were removed he renewed the practice of law and in a short time his practice became so large that it necessitated his taking in two other lawyers—James D. Jones and Louis T. Hanckel. He was elected Democratic member of Congress in 1870 and served a part of the forty-first and all of the forty-second Congress. Returning home from Washington he again renewed the practice of law with marked success.

Colonel Duke was probably one of the ablest advocates at the Charlottesville Bar. His success before juries was little short of remarkable. He had the happy faculty of seizing the salient points in a case and presenting them in such shape that the average jury was easily able to comprehend them. He was a most successful cross-examiner and very often used to say that

the great art of cross-examination was to know how not to cross-examine. The people in his community had the most implicit confidence in his uprightness and integrity and in the high way in which he practiced his profession. The consequence was that both with courts and juries he commanded respect and admiration. He despised the technicalities of the law and preferred always to win his cases upon the broad ground of the righteousness of his cause. He was exceedingly popular both with the people and his fellow practitioners, and it could be truly said that no man ever lived in the County of Albemarle who was more beloved by its citizens.

He was an eloquent speaker, highly cultivated and widely read, not only in his profession but in English literature. He was most apt in metaphor, anecdote and quotation and knew how to adapt himself, in either argument or oratory, to the audience he was addressing.

During the Readjuster controversy, Colonel Duke was prevailed upon to become a candidate for the Virginia Legislature and was the only debt-paying Democrat elected from this County during that controversy, serving in the Legislature in 1881, during one term.

He died at his residence at "Sunnyside" July 2nd 1898. He was survived by two sons: Honorable W. R. Duke, for several terms a member of the Virginia Legislature, and at present a member of the Board of Visitors of the University of Virginia, and the Editor-in-Chief of this periodical. Colonel Duke also had one daughter, Mary Willoughby Duke, who married Dr. Charles Slaughter, of Lynchburg, Virginia and died in 1883, leaving one child, the wife of Dr. Charles M. Lee, medical missionary at Wusih, China.

William T. Early, a member of the Albemarle Bar for many years, but whose name is curiously left out of the list given by Reverend Edgar Woods in his History of Albemarle County, was born in Stanardsville, Virginia in 1817. He studied law at the University of Virginia and commenced the practice of law in Albemarle County some time prior to 1850. He represented the County in the lower house of the General Assembly in 1856 and 57. He was very stout and very sensitive about his stout-

ness. A man of very high temper, but of very genial and pleasant manners, he was quite popular with his brethren of the bar, in spite of the rather numerous episodes which arose from their teasing him as to his rotundity. He commanded a fair practice at the bar, and, like so many of the lawyers of that day, combined farming with practice. He was a very bitter and ardent Whig, and was over military age when the Civil War commenced, but when the Reserve Forces were called in he became Captain of a Company of reserves under Colonel Duke and served with gallantry and ability.

After the war he became a member of the Republican Party and was given one of the positions in bankruptcy, which required his removal to the City of Lynchburg, where he died.

Mr. Early married a Miss Michie and was the father of Everett W. Early, of whom mention may be made hereafter amongst the lawyers of the younger generation.

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Just exactly what government Russia has we do not think anyone knows, but if the decision of Supreme Court Justice Geigerich of New York is sustained

**A Government Which it seems to us that it would occupy  
Can Be Sued and Yet a position unique amongst all the na-  
Cannot Sue. tions. This Justice decided in the  
last few days that while the Russian**

Soviet Republic has no authority to maintain an action in the courts of this country that Government may be sued here, and accordingly denied an application by Charles Recht, attorney for the Russian Government, to dismiss a suit brought by Max Wulfsohn & Sons, furriers, to recover \$800,000. The firm complains that skins purchased abroad by them were seized by the Soviet Government while passing through Russia consigned to America.

The application for the dismissal of the suit was based on the recent ruling by the Appellate Division dismissing an action by the Soviet Government against Jacques Cibrario for \$1,000,000 for the conversion of funds, on the ground that since the American Government has not recognized the Soviet Republic it has no standing in the courts. Justice Giegerich pointed out that be-

cause the Soviet Government cannot sue here it does not mean that it cannot be sued.

"It is settled that the immunity of a foreign Government from suit is not based upon any absolute right by virtue of its sovereignty, but upon international comity," he said, "and as there is no international comity existing between the United States Government and the Russian Socialist Federated Government, it has no claim to such immunity. In the present case the ability to sue arises by reason of the non-recognition of the Russian Soviet Government by the United States Government, but it does not seem that the fact creates any immunity from suit."

In a similar case recently it was decided in the Supreme Court that the Mexican Government could not maintain a suit here for breach of contract on the purchase of submarine chasers, and the suit was dismissed because the Mexican Government has not been recognized.

It seems to us a very strange state of affairs that any government could occupy the position of being a government to be sued and yet a government which cannot sue; but we are never surprised at anything that comes from the New York courts.

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Section 2302 of the Code of 1919 is as follows:—

"SUPERVISORS AND COUNCILS MAY EXEMPT  
COUNTY, DISTRICT, AND MUNICIPAL BONDS  
FROM TAXATION —It shall

**The Exemption of County,  
District and Municipal  
Bonds from Taxation.  
What Is the Meaning of  
Section 2302 of the Code  
of 1919.**

be lawful for the boards of supervisors of the several counties and the councils of the several cities and towns of this Commonwealth, and school boards of such counties, cities and towns who may be authorized by law to issue bonds for any purpose, to exempt such bonds, when issued, from all local taxation during the period for which said bonds are made payable, and when such bonds are exempted, said bonds shall not be assessable for taxation in the State of Virginia. The exemption herein provided for may be authorized, by having the fact of such exemption set forth in the order required by law to be entered, directing an election to be held on the question as to the issuance of such bonds, whether such order is entered by any court of this Commonwealth, or by the boards of supervisors of

the counties, or the councils of such cities and towns, or if not set forth in said order, then it shall be lawful for such local authorities who are charged with the power and duty of issuing bonds, to provide for the exemption of such bonds from local taxation at the time of, or before, making sale thereof, and in either event the fact of such exemption from local taxation shall be set forth on the face of the bonds."

It will be noticed that there is somewhat of an ambiguity in this section, and as the question is now being raised by some of the commissioners of the revenue, it might be well if the lawyers of the State would give the section their careful consideration. It will be noted that the boards of supervisors of the counties and the councils of the cities and towns may exempt bonds when issued by the counties, etc., from all "local taxation" during the period for which said bonds are made payable. This language would give rise to no trouble, but in the very same sentence the section goes on, "*When such bonds are exempted said bonds shall not be assessable for taxation in the State of Virginia.*"

Now the first part of this sentence would make it clear that the bonds could not be assessed for local taxation, but the question arises, "Local taxation where? Can a man in Lynchburg claim exemption from local taxation in that city upon a bond issued by the City of Richmond and be exempted from taxation by the council of that city? Or does local taxation refer merely to the taxation of the county or city or town issuing the bond? But the next sentence reads that the bond shall not be assessable for taxation in the State of Virginia. Does not that clearly mean that the bond is exempt from all taxation—not only local but from the State tax? The section is decidedly ambiguous and we think needs construction.

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We once knew a very distinguished lawyer in this State who said that he always felt a great deal more confidence in the decisions of those courts in which a dissenting opinion was not infrequent. His idea was that it showed an independence of thought on the part of the judges and that no one judge had a preponderating influence upon the court. Had he had occasion to examine the advance sheets of the recent opinions of the Su-

preme Court of the United States he would have felt that there was no cause for fear that any one judge was leading this court. In seven cases reported Mr. Justice Brandeis dissents in four, Mr. Justice Clarke in two, Mr. Justice Pitney in two, Mr. Justice Holmes in one, and Mr. Justice McKenna in one. And in reading over these dissenting opinions one sometimes cannot help feeling that the law of the case ought to have been with the dissenters.

Several of these cases are upon the question of the injunction of picketers, in cases of strikers, and one arises from the perusal of the majority opinion with a feeling of absolute befogment; but as we observed in an editorial written some months ago, in regard to one of these decisions, the court, very plainly intimates that it does not hold itself bound by any one of them, but that each case must stand on its own bottom. The court has reversed itself often enough in these cases, with that calm sublimity which is a peculiar characteristic of the Supreme Court of the United States in reversing itself without alluding to the former case, and we think any wise lawyer will advise his clients in any labor dispute, to take an appeal.

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The case of *Rice vs. Freeland*, decided in Staunton on the 22nd of September, 1921, by our Supreme Court of Appeals may probably give somewhat of a shock to  
**A Soldier's Will.** some of our very technical lawyers, but that the case is decided rightly we do not think any man can question who likes to see the right thing done regardless of consequences, and as our Supreme Court expressly says that the decision in this case is limited to the facts in it and is not to be taken as a precedent, we are sure every one will agree that complete and entire justice is done.

Freeland was a soldier in the late world war and died in France from wounds received in action. The record shows that he came to Roanoke from Fredericksburg, in which city he married one Mary B. Oakes and that he treated Roanoke as his home and stated that he expected to reside there after he was discharged from military service. The lower court very properly held that Roanoke was his residence and the Supreme Court sustained the lower court. The paper which was offered

for probate as a will consisted of a letter under date of July 20th, 1918, and was as follows:—

“Now, sweetheart, do not worry about the lotment or insurance for you will get everything that is coming to me. We are so near we can hear the guns roar most of the time and soon will be on the firing line, but the sooner we get there the sooner the war will be over, and then I will return to the one I love best. Tell little Mamie to write to me too and all the rest of the folks \* \* \* I will write to the New York bank and have them send my liberty loan bond money to you and you can do whatever you think best with it. \* \* \* I am not coming back until this war is over and then I will return to you. I have fixed the insurance and allotment so you will get it all right.”

A number of other letters were introduced in evidence which clearly showed that the wife of this soldier was the principal object of his concern and affection and that all of these letters were written in contemplation of the probable fate which overtook him. The Court held that the letter of July 20th, 1918, constituted a will, and whilst it recognized the fact that by this decision it was relaxing in some measure the ordinary rules of construction, yet it believed it to be the duty of the courts to treat the soldiers in actual service as belonging to a class of persons entitled to public gratitude and special consideration in respect to their private and property interests.

The Court cites only two cases—*McBride vs. McBride*, 26 Grat. 476, as sustaining the well known principle that it was not necessary to the validity of a will that it should be in testamentary form or that the testator should know that he had performed a testamentary act, or that he should intend to perform such an act; and the English case of *Gattwood vs. Knee*, 4 B. R. C. 910, 1 Law Rep., 1902 Probate Div. p. 99, in which a soldier, after speaking of sending a box of things to his wife, says, “If you have a letter saying that I am killed then the lot is for you” \* \* \* “You will receive the lot if I am killed in action, for I shall make my will in your favor; so you can keep this letter in case you want it for anything but let us hope that I arrive home safely again.”

The English court admitted this letter as a will on the ground that it showed that the writer had made a testamentary disposition of his property because he had stated in writing what he

intended and desired to be done with his property after his death. We are glad to see that so conservative a court as the English Probate Court exercised the policy of liberality and relaxation in favor of soldiers and seamen, and that our court has taken the same view; and while the case cannot be used as authority, yet it ought to be very persuasive hereafter.

The executive clemency extended to Debs has aroused much discussion the great preponderance of which is unfavorable to Mr. Harding's "act of grace."

**By the Unknown Soldier's Grave at Arlington.** The following poem which appeared in the *New York Times* of Dec. 27th, 1921, was written by our Editor-in-Chief and well expresses what the Unknown Soldier would say were he to speak from the Great Beyond. It is published by the Associate Editor and not at the instance of our Editor-in-Chief.

#### A VOICE SPEAKS FROM THE GRAVE.

"I lie here—of the many, one  
Who for the world's life gave a life.

Somewhere alone

Tonight a sorrowing mother mourns her son,  
Somewhere a father or mayhap a wife  
Suffers in silence: Can the world go on  
Regardless? 'Neath this heavy stone  
I slept in peace until a voice today

Rang through the earth to every soldier's grave,  
Whether in far off France or here at home,  
Shrilling: 'Awake! Awake! A moment crave  
This dull earth's ear to listen. Pray!

To the most high God—to men. There may be some  
To heed you yet! *Your* prisons cannot ope.

Beyond man's pardon and beyond his hope

Ye lie. Yet he who dared not fight,

But bayed at us and thought to tie our hands—

Who tried to aid our foe, starve out our brood—

Lo! he today walks out into the light!

From his base wrists fall off the prison bands;

For him the sunlight and the sweet air's good.

And, unrepentant, he is pardoned! Oh, arise!

Shake off Death's fetters! From your eyes

Brush the black dust; forget the pain

Ye suffered once! Be men again.

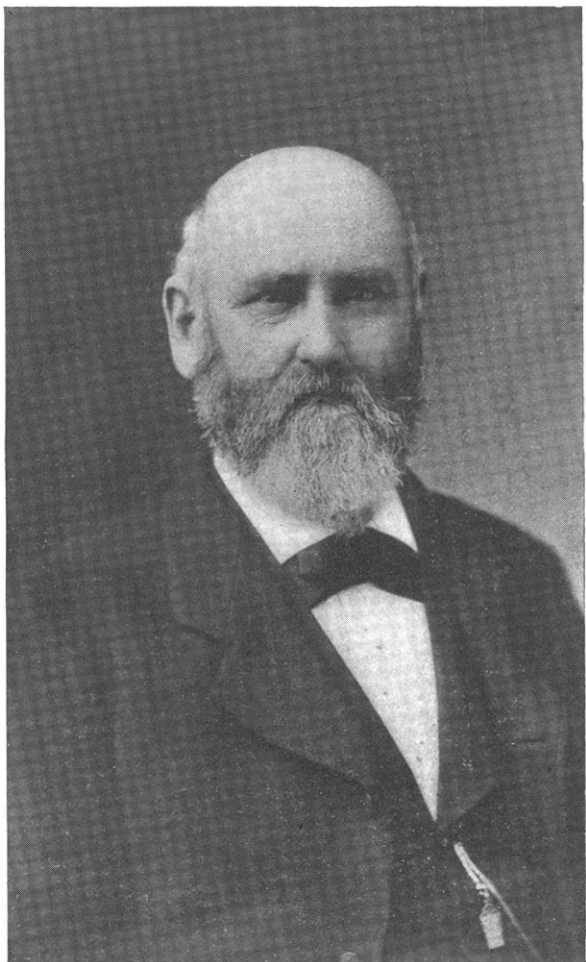
And march to meet this dastard foe.'  
"Ah, me! I may not rise nor go  
To take my vengeance! Yesterday my bier  
Was borne midst silent crowds, and tears were shed,  
And music wailed and strong men laid me here.  
Today my worst detractor lifts his head  
And spurns me with his foot, a free man midst the free.  
Why bring me here except it was in mockery?"

*The Father of Three Soldier Sons.*

In an editorial "No Commutation of Sentence for the Dead" the *Times* makes the following reference to the poem: Members of the small but vociferous group whose iterations, misrepresentations and concealments have brought about the liberation of Debs and a score more of less notorious seditionists ought to read the verses printed on this page today under the title, "By the Unknown Soldier's Grave at Arlington." At least it will inform them as to what has been the reaction to their achievement by another and much larger class than their own, and possibly make them a little less noisy in their echoing of the cheers which Debs, as he quitted his prison, received from the less fortunate convicts there.

Readers of a different sort will find their own emotions admirably expressed in the verses, and they will note particularly that though Debs has had his sentence commuted and returns, hale and happy, to his home, no such clemency has been or can be extended to the Unknown Soldier at Arlington or to any of the thousands and thousands of young men who lost their lives in their country's service. They remain in their graves, while other thousands and thousands came back from the war with permanently shattered health without having had organized in their behalf any such campaign as the one which has been waged for the men who not only refused to fight, but did their level best to help the national enemy.

The strong emotion that marks these verses is not without a special reason. The author of them is the father of three sons, all of whom served in the war. One of them, a First Lieutenant of infantry, was twice wounded and gassed in the Argonne; the second, of the same rank in the artillery, is not yet recovered from a violent attack of pneumonia contracted in the service, while the third risked his life daily as a Second Lieutenant in the aviation service.



COL. R. T. W. DUKE IN 1880